

REMARKS

In the Office Action, claim 7 was rejected under 35 USC section 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Claims 8-10 were rejected under 35 USC section 102(b) as being anticipated by Bayless US patent 4,265,454. Claims 1 and 7 were rejected under 35 USC section 102(b) as being anticipated by Joun US patent 5,800,236. Claims 2-6 and 11-13 were objected to as being dependent upon a rejected base claim, with an indication that such claims would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claims 14 and 15 were allowed.

By this response, claim 7 has been amended to address the matter of language giving rise to the rejection under 35 USC section 112, second paragraph. Claims 7, 12, 13 and 15 are also amended to address minor matters of language.

Claim 1 has been canceled. Claims 2 and 5 are amended to independent form, in each case incorporating the limitations of the base claim and any intervening claims. Claim 11 has also been amended to independent form, again incorporating the limitations of the base claim and any intervening claims. In view of the Examiner's indication, it is thus believed that claims 2-7 and 11-13 are in allowable form, along with claims 14 and 15.

Claim 8 has been amended in a manner believed to patently define over the prior art. In this regard, claim 8 has been amended to state that the laterally spaced apart finger engagement structure comprises a pair of laterally spaced apart finger engagement members that define a space therebetween that is configured to receive a portion of the user's finger. Claim 8 is also amended to state that the user's finger is received within the space between the finger engagement members, to stabilize the flying toy device on the user's finger.

The Examiner set forth the position that the Bayless reference includes spaced finger engagement structure in the form of the top and bottom surfaces of member 20. However, the Bayless reference does not show a pair of laterally spaced apart finger engagement members that define a space therebetween, as claimed. The Bayless reference also does not show or suggest any such structure in which the finger engagement members define a space within which the user's finger is received, also as claimed.

For the above reasons, amended claim 8 is believed to patently define over the Bayless reference, and is allowable. Claims 9 and 10 dependent directly or indirectly from claim 8, and are believed allowable for the above reasons as well as in view of the subject matter of each claim.

Applicant's attorney has made every effort to place the application into condition for allowance with claims 2-15, and such action is earnestly requested.

The Examiner is encouraged to contact the undersigned by phone of questions remain after consideration of this response, or if such would otherwise facilitate prosecution.

Respectfully submitted,



Andrew S. McConnell
Registration No. 32,272

Dated: 6/10/09

Boyle Fredrickson, S.C.
840 North Plankinton Avenue
Milwaukee, WI 53203
Telephone (414) 225-9755
Customer No.: 23598